

Supreme Court, U. S.  
**FILED**

**FEB 6 1978**

MICHAEL RODAK, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977

\* \* \* \* \*

NO. 77-975

\* \* \* \* \*

OLIVER PAUL SUMMERS,  
Petitioner

vs.

STATE OF ALABAMA,  
Respondent

\* \* \* \* \*

R E P L Y

to

BRIEF IN OPPOSITION OF  
STATE OF ALABAMA

\* \* \* \* \*

FRED BLANTON, JR., Esq.

Law Offices

3716- 5th Avenue, South  
Birmingham, AL 35222

Attorney for Petitioner

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977

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NO. 77-975

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OLIVER PAUL SUMMERS,  
Petitioner

versus

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\* \* \* \* \*

REPLY

to

BRIEF IN OPPOSITION OF STATE OF ALABAMA

\* \* \* \* \*

TO THE HONORABLE, THE CHIEF JUSTICE OF  
THE UNITED STATES, AND THE ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE  
UNITED STATES:

Pursuant to Rule 24(4), Rules of the  
Supreme Court of the United States, peti-  
tioner, OLIVER PAUL SUMMERS, would reply  
to matters which have been raised in the  
Brief in Opposition filed herein by the  
respondent State of Alabama:

I.

This part of the Brief in Opposition  
raises the question of the timeliness of  
the docketing of the present petition for  
writ of certiorari. The Attorney General  
of Alabama states that he is not aware of  
any reason for this untimeliness.

However, on December 27, 1977, there was  
mailed to the Attorney General of Alabama

a copy of the following (omitting formal parts):

MOTION TO ALLOW OUT-OF-TIME FILING  
OF  
PETITION FOR WRIT OF CERTIORARI

\* \* \* \* \*

TO THE HONORABLE LEWIS F. POWELL, JR., As  
Circuit Justice for the Fifth Judicial  
Circuit of the United States:

OLIVER PAUL SUMMERS, movant here, moves for an ORDER which will permit him to file his petition for writ of certiorari to the Court of Criminal Appeals of the State of Alabama, and shows the following facts in support of this motion:

(1). On August 26, 1977, the Supreme Court of Alabama denied his petition for writ of certiorari to the Court of Criminal Appeals of Alabama, which had affirmed his conviction for the crime of robbery on May 24, 1977, and had denied his application for rehearing on June 28, 1977.

(2). Immediately upon the denial of certiorari by the Supreme Court of Alabama of his petition for writ of certiorari, SUMMERS engaged the services of his trial counsel, J. LOUIS WILKINSON, Esq., attorney of Birmingham, Alabama, to prepare, file, and docket a petition for a writ of certiorari to the Court of Criminal Appeals of the State of Alabama in the Supreme Court of the United States.

(3). Despite repeated assurance from Mr. Wilkinson and his associate, CHARLES M. PURVIS, Esq., that his petition

for a writ of certiorari had been presented to the Supreme Court of the United States, or had been filed or docketed therein, SUMMERS learned on December 23, 1977, that, in fact, no such petition for a writ of certiorari had been presented, filed, or docketed. He was also aware that this petition had to be docketed or was due to be filed on or before the expiration of 90 days from August 26, 1977, unless an extension of time had been granted pursuant to Rule 22, Rules of the Supreme Court of the United States. Apparently, no such motion for extension of time had been presented as permitted by the rule. The present motion is presented within the 60 days that an extension of time would have allowed for filing and docketing a petition for writ of certiorari.

(4). SUMMERS attaches hereto an affidavit setting forth the facts in detail as outlined above of and concerning his efforts to have a properly filed petition for writ of certiorari docketed timely in this Court.

(5). SUMMERS also attaches to this motion the petition for writ of certiorari which would be filed should this present motion be granted, and states that an examination of such proposed petition would indicate that he desires to raise substantial questions under the Constitution of the United States concerning his conviction and its affirmation in the courts of the State of Alabama.



(6). SUMMERS states that he has been diligent in connection with this petition for writ of certiorari, and that he has acted promptly after learning of the true state of facts.

\* \* \*

A F F I D A V I T

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, FRED BLANTON, a notary public for the State of Alabama at Large, personally appeared OLIVER PAUL SUMMERS, who is known to me and who, being first duly sworn, deposes and says as follows:

My name is OLIVER PAUL SUMMERS, and I am over the age of twenty-one years, and a resident citizen of Clanton, Chilton County, State of Alabama.

I am informed I am making this affidavit in connection with my motion to permit me to file in the Supreme Court of the United States a petition for a writ of certiorari directed to the Court of Criminal Appeals of Alabama, which affirmed my conviction for the crime of robbery on May 24, 1977.

After my conviction in the Circuit Court of Marshall County, Alabama, I retained my trial counsel for appellate work. These attorneys were J. LOUIS WILKINSON and CHARLES M. PURVIS of the Birmingham, Alabama Bar.

Also, after the denial of certiorari by the Supreme Court of Alabama on August 26, 1977, I retained Messrs. Wilkinson and Purvis to prepare and

file in the Supreme Court of the United States a petition for a writ of certiorari to the Court of Criminal Appeals of Alabama. The charge for this was \$1000.00, including the necessary duplication. I have paid the \$1000.00, and to the best of my recollection this was paid early in June of 1977.

After August 26, 1977, I called and talked with Mr. Wilkinson about this several times, since I was aware of a time limit, and that the Court of Criminal Appeals had delayed a mandate in the case for 90 days to permit me to file the petition for writ of certiorari in the Supreme Court of the United States. I was assured on each occasion that the petition would be properly filed and on time.

In the early part of December of this year, Mr. Wilkinson gave me a copy of a booklet which he said was the petition for certiorari which was being filed in the Supreme Court of the United States.

I was in the office of an attorney in Clanton, Alabama, when he called Mr. Purvis about the filing of the petition. This was late in December of 1977. Mr. Purvis stated the petition had been filed. This was on December 23, 1977, after I had been informed that the Clerk of the Supreme Court of the United States had said that there was no petition filed for Oliver Paul Summers against the State of Alabama.

I immediately took steps to do what I could about this, and have filed the

assistance of counsel who is a member of the Bar of this Court.

Under these circumstances, over which I have had no control, I request the Court to permit me to file my petition for writ of certiorari, which I know is out-of-time.

s/ Oliver Paul Summers  
OLIVER PAUL SUMMERS

Sworn to and subscribed before me this 27th day of December, 1977.

(SEAL) s/ Fred Blanton  
Notary Public, Alabama,  
State at Large, My Commission Expires January 7, 1978

While the foregoing motion was not presented to Mr. Justice Powell, as counsel was informed by telephone on December 29, 1977, the Attorney General was mailed a copy of the motion and all accompanying papers.

Further, a manuscript copy of an alleged petition for writ of certiorari was filed in the Court of Criminal Appeals of Alabama on November 28, 1977, wherein it was certified, by counsel not associated in

any way with present counsel, that a copy had been served on the Attorney General of Alabama. And the booklet referred to above by SUMMERS was allegedly served on the Attorney General of Alabama by the same counsel. Under these circumstances, it would appear that the Attorney General of Alabama was on notice that there was some difficulty with the docketing of the petition for writ of certiorari in this case, not due to any

any fault of petitioner.

Petitioner SUMMERS submits that given the foregoing facts and circumstances that the State of Alabama has been less than candid in arguing for a denial of a writ on the ground of untimeliness.

Lastly, while petitioner SUMMERS is cognizant of the restrictions imposed upon him in replying to the Brief in Opposition, he would point out that the State of Alabama has admitted that he was put to trial within 30 days of arraignment, and practically within 30 days after indictment. This overly speedy trial which prevented the use of interrogatories is a key point in the questions presented to this Court in the petition for a writ of certiorari.

Also, the bases for other questions is not eroded by the testimony produced at pp.15 thru 17 of the Brief in Opposition. At the bottom of p.16 and the top of p. 17, it appears clearly that the trial court excluded from the consideration of the jury remarks about petitioner SUMMERS and safes.

Too, the testimony at pp.24 and 25 of the Brief in Opposition was merely admitted conditionally when the trial judge stated: "Overruled at this point." The trial judge obviously ruled this testimony out when the objection was sustained to argument based upon it. See p. 27 of the Brief in Opposition.

#### CONCLUSION

Petitioner SUMMERS submits that the

petition for a writ of certiorari heretofore docketed in this Court should be considered by the Court on its merits.

Most respectfully,

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FEBRUARY, 1978